

STATE OF MICHIGAN
COURT OF APPEALS

SAIDAH DAHER,

Plaintiff-Appellee,

v

ALI ABDO,

Defendant-Appellant.

UNPUBLISHED

April 20, 2006

No. 259091

Wayne Circuit Court

LC No. 03-324237-NO

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying his motion for summary disposition in this premises liability case. We reverse.

Plaintiff was injured when, while attempting to visit defendant's wife at their residence, one of the wooden steps leading to the back door of the house broke, causing plaintiff to fall. Plaintiff filed this action against defendant and, subsequently, defendant filed a motion for summary disposition under MCR 2.116(C)(10), arguing that he did not have actual or constructive notice of the defective step.

Plaintiff replied to the motion, arguing that defendant should have known about the step because he admitted that he regularly inspected and maintained the stairway and had previously replaced deteriorated steps. In any event, plaintiff argued, defendant threw the defective step in the garbage, destroying the evidence, thus it should be presumed that he knew about the condition. And, plaintiff argued, defendant had a statutory duty to maintain the steps because he was a landlord over leased premises. Defendant responded, arguing that he and his family used the stairway every day and no one had noticed a defect. He attached an affidavit signed by a family member attesting to this asserted fact. Defendant also argued that even if he had kept the step, it would not have shown the condition the step was in prior to the fall, therefore it was irrelevant evidence. And, defendant argued, he had no statutory duty to maintain the steps to his private residence. After hearing oral arguments, the trial court agreed with plaintiff, holding that there was an issue of fact as to whether defendant had constructive notice of the defective condition of the step. Therefore, defendant's motion was denied and this appeal followed.

Defendant argues that he was entitled to a grant of summary disposition because there is no genuine issue of material fact that he did not have constructive notice of the alleged defect. After review de novo, considering the documentary evidence in a light most favorable to plaintiff, we agree. See MCR 2.116(C)(10); *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

As a licensee on defendant's property, defendant had a duty to warn plaintiff of any hidden dangers he knew about or had reason to know about, if plaintiff did not know or have reason to know about the danger. See *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Defendant did not, however, have a duty to inspect or make the premises safe for plaintiff's visit. See *id.* Here, it is uncontested that defendant did not have actual notice of the condition. The issue is whether plaintiff established that a question of fact existed as to whether defendant should have known about the condition of the step.

Plaintiff argues that because defendant testified that he regularly inspected the stairway and had previously replaced deteriorated steps, he should have known about the defective condition of the step involved in plaintiff's fall. But plaintiff's argument rests on speculation only. Plaintiff has proffered no evidence in support of a conclusion that defendant should have known about the deteriorated steps. For example, she has presented no evidence of the character, nature, or duration of the condition that would permit the inference that there was something wrong with the step that defendant should have seen. See, i.e., *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). In opposing the motion for summary dismissal, plaintiff was required to present admissible evidence to show the existence of a disputed fact as to the issue of notice that does not depend on speculation or conjecture. See *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002); *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Plaintiff has failed to carry her burden and summary disposition should have been granted in defendant's favor.

However, plaintiff argues, because defendant destroyed the evidence constructive notice should be imputed against him. There is a general rule that if a party intentionally destroys evidence that is relevant to a case, a presumption arises that the evidence would have been adverse to that party's case. *Ward v Consolidated Rail Corp*, 472 Mich 77, 84; 693 NW2d 366 (2005). However, this adverse presumption arises only when the complaining party can establish "intentional conduct indicating fraud and a desire to destroy [evidence] and thereby suppress the truth." *Id.*, quoting *Trupiano v Cully*, 349 Mich 568, 570; 84 NW2d 747 (1957), quoting 20 Am Jur, Evidence, § 185, p 191. In this case, nothing suggests that defendant intentionally destroyed evidence because of fraud or a desire to suppress the truth. The step broke on December 19, 2000. Defendant threw the broken board into the garbage and put a new board in soon after the incident. Plaintiff did not file her complaint until July 23, 2003. Until that complaint was filed, defendant had no reason to keep a broken step and, by the time plaintiff filed suit, the step was long gone. Therefore, plaintiff has failed to establish intentional conduct giving rise to the presumption that the step would have been adverse to defendant's case.

And, plaintiff argues, lack of notice is not a defense here because defendant was a lessor of residential property and thus had a statutory duty, pursuant to MCL 554.139, to maintain the steps in reasonable repair. Plaintiff is correct that MCL 554.139 imposes certain duties on a landlord, including the duty to keep the premises in reasonable repair. But none of those duties are implicated in this case because plaintiff was on the premises to visit defendant's wife in his residence, and was injured on steps that led exclusively to his private residence. Defendant did not have a statutory duty to maintain these steps therefore plaintiff's argument is without merit.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald